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April 14, 2004

VIA HAND-DELIVERY

General Counsel Office
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463
Attn: Alva E. Smith

Re: **MUR 5424**

Dear Ms. Smith:

This letter is in response to the Federal Election Commission's ("Commission") letter notifying the Virginia Foxx for Congress Committee that a complaint has been filed by John B. Whidden V, alleging violations of the Federal Election Campaign Act of 1971 as amended ("Act"). A copy of Mr. Whidden's complaint was enclosed with the Commission's letter. Mr. Whidden's complaint does not contain a clear and concise recitation of facts which describe a violation of a statute or regulation over which the Commission has jurisdiction, as required by the Commission's regulations (11 C.F.R. § 114.4(c)(3)). The Commission should therefore close this matter without further action.

The complaint filed by Mr. Whidden is based on a single newspaper story and brief column in the Winston-Salem Journal. The news article contains quotations from other candidates for Congress, but offers no factual support for allegations of specific violations of the Act. The February 22, 2004 Winston-Salem Journal newspaper account states that "federal election law strictly forbids using expenditures in a state campaign to benefit a federal one, reports filed by Foxx's campaigns show." Then the article lists five bullets which presumably are meant to provide the "factual" basis for Mr. Whidden's complaint.

The Respondent does not dispute that the Act may prohibit the Foxx Senate Committee from making expenditures for the Foxx congressional campaign. However, the newspaper article fails to detail any specific expenditures made by the Foxx Senate Committee that would violate the Act. The articles list no purchase, payment or gift, nor anything of value made by the Foxx Senate Committee for the purpose of influencing any

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federal election. This letter and accompanied materials detail why the articles and corresponding complaint fail to establish any violations of the Act.

- *No telephone expenditures by her congressional campaign, and several thousand dollars in cellular, lands line and Internet access bills paid through December by her state committee.*

The initial office of the Foxx Congressional campaign opened in Raleigh on 5/1/03. The rent for this office included phone service. In September of 2003, the campaign opened an additional office in Watauga County. A phone was installed in this office for the Congressional Campaign. The phone company (Skyline telephone) had an existing contractual relationship with the Foxx for Senate Committee. This prior arrangement inadvertently resulted in phone charges for the Watauga office being debited automatically to the Senate Committee's checking account. Through this mistake, the first four months of service from the Watauga County office were debited to the Senate Committee's checking account (October, November, December, 2003 and January 2004). When this error was discovered by Tom Foxx (Senator Foxx's husband), the Congressional Committee reimbursed the Senate Committee for the full amount of the phone bills for these four months. This reimbursement (\$286.71) was made on February 18, 2004. This reimbursement was at the campaign's initiative prior to this issue being raised by any outside party or any newspaper account.

The Foxx's personal residence has two landlines, and Senator Foxx has a cell phone which has since 1994 been used by her for various activities, including her Foxx for Senate Campaign and constituent functions. The cellular bill had been paid by the Senate Campaign Committee since 1995. Prior to entering the congressional race in April, Senator Foxx's cellular phone bill averaged \$193.90 per month. After entering the congressional race, the cellular phone bills averaged \$269.89 per month. A significant part of this increase is probably reflective of the fact that for five months there was no legislative session, and during such periods calls have traditionally increased for Senator Foxx. The Senate Committee was paid \$186.39 from personal funds, and this is shown as a candidate in-kind congressional campaign contribution on 3/10/04. This includes all calls to numbers in the 5th Congressional District outside the senate district whether they were for the congressional race, senate responsibilities, personal or combined telephone conversations. Presently, the Foxxes have all home phones (cell and land) billed to their personal account.

- *Payments to the same consultants to set up the Website for her congressional campaign, to set up and maintain a new North Carolina campaign website for Foxx last May.*

This statement is accurate. Payments were made by the Foxx State Senate and Congressional Committees to the same consultant, Battleship Consulting. The same firm built two separate websites, one for Senator Foxx in her official capacity as state senator

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(www.foxxforsenate.com); and a separate website for her congressional campaign (www.virginiafoxx.com). No reference is made on the *foxxforsenate* website to the congressional campaign. There is not even a link to the Congressional Committee's website. A prior *foxxforsenate* website was redone and paid for with Foxx's state senate campaign funds in 2003. Senator Foxx has a continuing responsibility to her senate constituency, and the website remains solely a site for Senator Foxx's activities as a state senator. It is not for the purpose of influencing any federal election. A new, separate website was created for the congressional campaign, and Battleship Consulting was separately paid by the Foxx for Congress Committee for this service. A careful reading of the complaint and the Winston-Salem Journal article finds no allegations in conflict with these facts.

The Foxx Congressional Committee is paying the same firm, Battleship Consulting, and intends to continue to pay this firm for work on the congressional website. There is no prohibition in the Act or the Commission's regulations that would make it illegal, nor even inappropriate, for a consultant to be employed independently by state and federal committees to set up separate websites for each committee. The payments to Battleship Consulting for the *foxxforsenate* website would have been made irrespectively of the Foxx Congressional Campaign. The payments to Battleship for the senate website were not in connection with a federal election.

- *Ads bought in a North Wilkesboro newspaper in September and on an Alleghany County radio station in December that were paid for by the state campaign.*

These purchases of a newspaper and a radio advertisement by the Foxx State Senate Committee do not constitute a violation of the Act. The advertisements were not in connection with any federal election. Neither the Winston-Salem Journal nor the complaint alleged specifically that these two ads were expenditures for the congressional campaign. Attached to this letter is a copy of the newspaper advertisement (attachment A). The advertisement made no reference to Senator Foxx's candidacy for Congress or any opposition candidates. This county is split geographically with two state senators. Some constituents often were confused and suggested that Senator Foxx make it known that she represented them. The ad was planned prior to Senator Foxx entering the congressional race.

The Alleghany County radio advertisement was a repeat of a Christmas greeting that the Senator has done for 9 years and is the standard holiday practice of many locally elected officials on this radio station. It contains no reference to the Foxx congressional candidacy. It is not a political message.

The Wilkesboro paper and Alleghany station are media outlets in which Senator Foxx has run similar constituent service advertisements in prior years. The advertisements were purchased pursuant to her responsibilities as a North Carolina state senator. These Foxx State Senate Committee expenditures would have been made

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irrespective of the Foxx congressional campaign. These expenditures were not made to influence a federal election.

- *Membership dues paid to the Yadkin County Chamber of Commerce, even though Yadkin County is not in Senator Foxx's district.*

The membership for the Yadkin County Chamber of Commerce was initially mistakenly paid by the Foxx State Senate Committee. This error was discovered in January after an internal review of the State Senate Committee's North Carolina year-end disclosure report, and the mistake was promptly corrected by the congressional campaign before any question was raised by anyone not directly associated with the congressional campaign. Carolyn Aldridge contacted the Yadkin County Chamber of Commerce and requested a refund of the dues payment on 02/08/04. The reimbursement check from the Chamber was dated February 16, 2004. The Foxx Congressional Committee issued a check in the amount of \$100.00 to the Chamber of Commerce on 02/16/04. This senate committee payment was an inadvertent mistake of de minimis amount and was remedied by the congressional campaign at its own initiative prior to any public recognition.

- *Payments as late as July to an aide in Foxx Senate campaign who later became Foxx's spokesperson for her congressional campaign.*

The Respondent assumes that the aide referenced in this sentence is Ms. Amy Auth, who is now the Communications Director for the congressional campaign. Ms. Auth did originally worked for Senator Foxx's state senate office, keeping mailing list, answering letters, sending congratulatory letters and managing other standard constituent service work. Pursuant to these state senate-related services, she was paid by the Foxx State Senate Committee. Senator Foxx was impressed by her work and hired her to work on her congressional campaign. Ms. Auth's employment by the congressional campaign has been paid solely by the Foxx Congressional Committee. A careful reading of the complaint and the Winston-Salem Journal article finds no actual allegations in conflict with these facts. There is nothing in the Act or in the Commission's regulations that prohibits the congressional campaign from employing an individual that has worked in a prior state campaign or state office.

The payments by the Foxx State Senate Committee to Ms. Auth were for her work for the Senator's state office and state committee. These payments would have been made irrespective of the Foxx Congressional Campaign.

Foxx For Senate 2003 Disbursements

The Foxx State Senate Committee did disburse \$34,746.83 during calendar year 2003. These disbursements would have been made irrespective of the Foxx Congressional Campaign. The statement in the Winston-Salem Journal's February 25 column that "state senators do not spend that kind of money for constituent services and

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Foxx did not either" is simply wrong. Even a brief review of North Carolina's campaign disclosure reports will show that such expenditures are not unusual. Representative Lyona Grey from Winston Salem (a much smaller district than Senator Foxx's district) spent \$41,245.86 in 1999 and \$56,114.59 in 2001. Senator Mark Basnight spent \$130,350.85 in 1999 and \$147,842.42 in 2001. Senator Tony Rand spent \$69,551.70 in 1999 and \$81,885.48 in 2001. At the time of this research, 2003 results were not posted for review.

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Significant portions of the 2003 disbursements by the Senate Committee reflect payment of expenses arising from the 2002 state senate election. The payment of \$10,500 to Capital Advertising covered consultant fees from the 2002 state senate election. Aldridge Bookkeeping has separately billed accounting and campaign financial reporting services to both the Congressional Campaign and the State Senate Campaign Committees. The \$5,700 payment from the State Senate Campaign Committee in 2003 reflects expenses arising from the 2002 election and the transfer of the State Senate Committee's financial records to a new computer system. Aldridge Bookkeeping was employed by the Congressional Committee for its accounting and reporting responsibilities beginning in the summer of 2003. They have billed the congressional campaign appropriately for those services.

The State Senatorial Campaign Committee's purchase of a new computer to replace a 10-year old model was reflected in the reimbursement payment of \$1,863 to Tom Foxx on 8/18/03. This computer is not used in connection with the congressional campaign. The Congressional Campaign has separately purchased another computer.

Senate Committee Fundraising

Mr. Whidden's complaint states that he is "disturbed" to see that Senator Foxx's state senate campaign has received contributions after she announced her candidacy for the United States Congress. As the Foxx for State Senate Committee has disclosed on its state disclosure forms filed pursuant to North Carolina law, in 2003 the state senate campaign committee received only four contributions, totaling \$3,000, after Senator Foxx's April congressional candidacy announcement. Although Mr. Whidden may be "disturbed" by these state campaign contributions, they do not conflict with any provisions of the Act. The contributions were accepted pursuant to North Carolina law, where they may be used to support Foxx's responsibilities as a state senator. Senator Foxx attended a function which resulted in a single additional \$600 contribution to her state senate campaign in 2004. Senator Foxx has not actively sought any contributions to her state senate campaign committee since June 2003.

Conclusion

Any complaint must contain a clear and concise recitation of facts which describe an alleged violation of the Federal Election Campaign Act.. A complaint not based upon

Alva E. Smith
Federal Election Commission
April 14, 2004
Page 6

personal knowledge must be accompanied by the identification of the source of the information which describes and explains the complainant's belief in the truth of their accusations. Mr. Whidden has only provided the Commission a copy of two brief newspaper accounts to support his complaint. These articles do not with sufficient specificity provide any basis for the Commission to commence an action, and Mr. Whidden does not claim any personal knowledge of the underlying facts in the articles. Simply making a blanket reference to Senator Foxx's filings with the Federal Election Commission and to her state campaign disclosure reports filed with the State Board of Election in North Carolina is insufficient to meet the specific requirements of the Commission's regulations.

For these reasons, Mr. Whidden's complaint should be dismissed without further action.

Thank you for this opportunity to respond.

Sincerely,



E. Mark Braden

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Attachments

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